

REMARKS

Claim 24 is the only claim that remains in the application.

Claim 24 is objected to for reciting the abbreviation "IMP" without setting forth the full name of the compound. In response thereto, claim 24 has been amended to recite "a protected inosine 5'-monophosphate (IMP) compound", support for which can be found in paragraph [0047]. Reconsideration of the objection is respectfully requested.

Claim 24 stands rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 5,614,504 to Hadden, et al. Specifically, the Office Action holds that Hadden, et al. discloses a method of enhancing the immune response to a vaccine comprising administering an adjuvant formulation comprising inosine 5'-monophosphate compounds, including MIMP, administering the IMP compounds to treat influenza, measuring a response to the vaccine, and measuring an enhanced DTH response and T cell activation and cytokine secretion in response to IMP compounds. Reconsideration of the rejection under 35 U.S.C. § 102(b), as anticipated by Hadden, et al, as applied to the claims, is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

Hadden, et al. does not disclose the combination of an IMP with an agent chosen from the group consisting of antiviral agents, microbial agents, vaccine agents, wherein the

vaccine agent can be ineffective alone in inducing a therapeutic clinical response, and combinations thereof, in order to treat influenza. Example 10 in Hadden, et al. shows that mice challenged with influenza virus were administered MIMP or Squalene, which is merely an excipient in formulation, plus MIMP. Hadden, et al. only discloses administering the IMP compound itself in treating various conditions, including influenza.

In contradistinction, the claims of the present invention have been clarified to require the presence of an agent as described above. The agent enhances the effect that the IMP compound has on the influenza as compared to administering the IMP compound alone.

Furthermore, while Hadden, et al. describes a general T cell stimulation when IMP compounds are applied to cells, such as in Example 2 and Example 3, Hadden, et al. does not show a T cell response in influenza but rather only that mice given MIMP increased mean survival time in Example 10. Therefore, Hadden, et al. cannot perform the step of detecting a T cell response with respect to a treatment for influenza. One cannot assume that a T cell response is present in an unhealthy subject that cannot mount an immune response normally just because a T cell response has been observed in healthy, normal cells.

The present invention shows a T cell response for the first time in influenza challenged mice, as shown in Examples 2-4. Without having shown that IMP provides a T cell response specifically to influenza, Hadden, et al. cannot disclose the method of the present invention.

Therefore, since Hadden, et al. does not disclose IMP in combination with an agent or detecting a T cell response in influenza as set forth in the presently pending independent claims, the claims are patentable over Hadden, et al. and reconsideration of the rejection is respectfully requested.

In view of the above, it is respectfully submitted that the presently pending independent claims be allowed.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING VIA EFS-WEB

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I hereby certify that this correspondence is being electronically filed with the United States Patent & Trademark Office on the above date.

/Natalie Zemgulis/
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